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Housing and Regeneration Act 2008

2008 CHAPTER 17

PART 2

REGULATION OF SOCIAL HOUSING

CHAPTER 5

DISPOSAL OF PROPERTY

VALID FROM 01/04/2010

Introductory

170 Overview

This Chapter makes provision about the disposal of property by registered providers.

171 Power to dispose

- (1) A [^{F1}private registered provider] may dispose of land.
- (2) But a non-profit registered provider may dispose of the landlord's interest under a secure tenancy only to another non-profit registered provider [^{F2}or to a local authority which is a registered provider].
- (3) Subsection (1) is subject to the following provisions of this Chapter (which include provisions requiring the regulator's consent for certain disposals).

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Textual Amendments

- F1** Words in s. 171(1) substituted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), **Sch. 1 para. 36(a)**
- F2** Words in s. 171(2) inserted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), **Sch. 1 para. 36(b)**

Commencement Information

- I1** S. 171 in force at 1.4.2010 by [S.I. 2010/862](#), **art. 2** (with Sch.)

Regulator's consent

VALID FROM 01/04/2010

172 Requirement of consent

- (1) Disposal of a dwelling by a registered provider requires the regulator's consent if the dwelling is social housing.
- (2) The regulator shall not consent to a disposal by a non-profit registered provider which it thinks is being made with a view to enabling the provider to distribute assets to members.
- (3) Consent is not required under this section if the disposal falls within an exception listed in section 173.

VALID FROM 01/04/2010

173 Exceptions

- (1) This section lists exceptions to the requirement of consent in section 172.
- (2) Exception 1 is that consent is not required for disposal by a registered provider by way of—
 - (a) an assured tenancy,
 - (b) an assured agricultural occupancy,
 - (c) an arrangement that would be an assured tenancy or an assured agricultural occupancy but for any of paragraphs 4 to 8, 12(1)(h) and 12ZA to 12B of Schedule 1 to the Housing Act 1988 (c. 50) (exclusions),
 - (d) a secure tenancy, or
 - (e) an arrangement that would be a secure tenancy but for any of paragraphs 2 to 12 of Schedule 1 to the Housing Act 1985 (c. 68) (exclusions).
- (3) Exception 2 is that consent is not required for a disposal for which consent is required under—
 - (a) section 81 or 133 of the Housing Act 1988, or
 - (b) section 173 of the Local Government and Housing Act 1989 (c. 42).

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- (4) Exception 3 is that consent is not required for a disposal under Part V of the Housing Act 1985 (right to buy).
- (5) Exception 4 is that consent is not required for a disposal in pursuance of a tenant's right to acquire under—
 - (a) section 180, or
 - (b) section 16 of the Housing Act 1996 (c. 52) (tenant's right to acquire social housing in Wales).

174 Procedure

- (1) Consent may be—
 - (a) general, or
 - (b) specific (whether as to particular registered providers, as to particular property, as to particular forms of disposal or in any other way).
- (2) Consent may be retrospective.
- (3) Consent may be expressed by reference to a policy for disposals submitted by a registered provider.
- (4) Consent may be conditional.
- (5) Before giving consent the regulator must consult—
 - (a) the HCA,
 - (b) one or more bodies appearing to it to represent the interests of registered providers,
 - [^{F3}(ba) any body for the time being nominated under section 278A,]
and
 - (c) one or more [^{F4}other] bodies appearing to it to represent the interests of tenants.
- (6) Subsection (5) does not apply to specific consent relating only to one or more particular registered providers or properties.

Textual Amendments

- F3** S. 174(5)(ba) inserted (12.11.2009) by [Local Democracy, Economic Development and Construction Act 2009 \(c. 20\)](#), **ss. 26(3)(a)**, 148(1)(c)
- F4** Word in s. 174(5)(c) inserted (12.11.2009) by [Local Democracy, Economic Development and Construction Act 2009 \(c. 20\)](#), **ss. 26(3)(b)**, 148(1)(c)

Commencement Information

- I2** S. 174(5)(6) in force at 8.9.2008 by [S.I. 2008/2358](#), **art. 3(1)** (with [art. 3\(3\)\(4\)](#))

VALID FROM 01/04/2010

175 Disposal without consent

- (1) A purported disposal by a registered provider is void if—

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- (a) it requires the regulator's consent, and
 - (b) the regulator has not given consent.
- (2) But subsection (1) does not apply to a disposal by a non-profit registered provider to one or more individuals (“the buyer”) if—
- (a) the disposal is of a single dwelling, and
 - (b) the registered provider reasonably believes at the time of the disposal that the buyer intends to use the property as the buyer's principal residence.

VALID FROM 01/04/2010

176 Notification where disposal consent not required

- (1) If a non-profit registered provider disposes of land other than a dwelling which is social housing it shall notify the regulator as soon as is reasonably practicable.
- (2) The regulator may give a direction dispensing with the notification requirement.
- (3) Section 174(1) and (3) to (6) applies to a direction under this section as it applies to consent under section 172.

VALID FROM 01/04/2010

Proceeds

177 Separate accounting

- (1) The accounts of a registered provider must show its net disposal proceeds, as a separate “disposal proceeds fund”.
- (2) The following are net disposal proceeds—
 - (a) net proceeds of sale to a tenant in pursuance of the right to acquire conferred by section 180,
 - (b) net proceeds of sale to a tenant in pursuance of the right to acquire conferred by section 16 of the Housing Act 1996 (c. 52),
 - (c) net proceeds of sale of property in respect of which a grant was made under section 21 of that Act,
 - (d) net proceeds of sale of property in respect of which a grant was made under section 19 of this Act in respect of discounts given by a registered provider on disposals of dwellings to tenants,
 - (e) grant received under section 20 or 21 of the 1996 Act,
 - (f) grant received under section 19 of this Act in respect of discounts given by a registered provider on disposals of dwellings to tenants,
 - (g) repayments of discount in respect of which grant was received under section 20 or 21 of the 1996 Act,
 - (h) repayments of discount in respect of which grant was received under section 19 of this Act in respect of discounts given by a registered provider on disposals of dwellings to tenants,

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- (i) other proceeds of sale specified by the regulator, and
 - (j) other grants specified by the regulator.
- (3) The regulator shall determine amounts to be deducted in determining net proceeds of sale.
 - (4) The method of constituting the disposal proceeds fund and showing it in the accounts shall be in accordance with a direction of the regulator.
 - (5) Subsections (5) to (7) of section 127 apply to a direction under this section as to a direction under that section.
 - (6) Sections 141 and 142 apply in relation to a direction under this section as in relation to a direction under section 127.
 - (7) Interest shall be added to the fund in accordance with a determination made by the regulator.
 - (8) Where this section applies in relation to the proceeds of sale arising on a disposal, section 32 above, section 27 of the Housing Act 1996 (c. 52) and section 52 of the Housing Act 1988 (c. 50) do not apply.

178 Use of proceeds

- (1) Sums in a registered provider's disposal proceeds fund may be used or allocated only in accordance with a direction by the regulator.
- (2) The regulator may give a direction only with the Secretary of State's approval.
- (3) If at the end of a period specified by the regulator the disposal proceeds fund includes sums which have not been allocated in accordance with subsection (1), the regulator may require the registered provider to pay the sums to the HCA.

VALID FROM 01/04/2010

Tenants' rights and duties

179 Application of Housing Act 1996

- (1) The following provisions of the Housing Act 1996 apply in relation to disposals of social housing by registered providers, with the modifications set out below (and any other necessary modifications).
- (2) The provisions are—
 - (a) sections 11 to 12 (repayment of discount on disposal),
 - (b) sections 12A and 12B (landlord's right of first refusal),
 - (c) section 13 (disposal of property in National Park), and
 - (d) sections 14 and 15 (supplemental).
- (3) In those provisions—
 - (a) references to a registered social landlord shall be treated as references to a registered provider,

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- (b) references to consent given by the Welsh Ministers under section 9 of the 1996 Act shall be treated as references to consent given by the regulator under section 172 of this Act,
 - (c) references to the Welsh Ministers in connection with a power to make orders or regulations shall be treated as references to the Secretary of State,
 - (d) in section 12(5)(b) of the 1996 Act the reference to the Welsh Ministers shall be treated as a reference to the HCA, and
 - (e) references to a resolution of the National Assembly for Wales shall be treated as references to a resolution of either House of Parliament.
- (4) This section does not affect the continued application of the provisions listed in subsection (2) in relation to disposals made before this section comes into force.

VALID FROM 01/04/2010

Right to acquire

180 Right to acquire

- (1) The tenant of a dwelling in England has a right to acquire the dwelling if—
- (a) the landlord is a registered provider or a registered social landlord,
 - (b) the tenancy is within subsection (2),
 - (c) the provision of the dwelling was publicly funded,
 - (d) the dwelling has remained in the social rented sector ever since that provision, and
 - (e) the tenant satisfies any qualifying conditions applicable under Part V of the Housing Act 1985 (c. 68) (as it applies by virtue of section 184).
- (2) A tenancy is within this subsection if it is—
- (a) an assured tenancy, other than an assured shorthold tenancy or a long tenancy, or
 - (b) a secure tenancy.
- (3) The reference in subsection (1)(a) to a registered provider includes—
- (a) a person who provided the dwelling in fulfilment of a condition imposed by the HCA when giving assistance to the person;
 - (b) a person who provided the dwelling wholly or partly by means of a grant under section 27A of the Housing Act 1996 (c. 52).

181 Interpretation: “publicly funded”

- (1) The provision of a dwelling was publicly funded if any of the following conditions is satisfied.
- (2) Condition 1 is that—
- (a) the dwelling was provided by a person in fulfilment of a condition imposed by the HCA when giving assistance to the person, and
 - (b) before giving the assistance the HCA notified the person that if it did so the provision of the dwelling would be regarded as publicly funded.

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- (3) Condition 2 is that the dwelling was provided wholly or partly by using sums in the disposal proceeds fund of—
 - (a) a registered provider, or
 - (b) a registered social landlord.
- (4) Condition 3 is that—
 - (a) the dwelling was acquired by a registered provider, or a registered social landlord, on a disposal by a public sector landlord,
 - (b) the disposal was made on or after 1st April 1997, and
 - (c) at the time of the disposal the dwelling was capable of being let as a separate dwelling.
- (5) Condition 3 is not satisfied if the dwelling was acquired in pursuance of a contract made, or option created, before 1st April 1997.
- (6) Condition 4 is that—
 - (a) the dwelling was provided wholly or partly by means of a grant under section 18 or 27A of the Housing Act 1996 (c. 52), and
 - (b) when the grant was made the recipient was notified under section 16(4) of that Act that the dwelling was to be regarded as funded by means of such a grant.

182 Interpretation: “remained in the social rented sector”

- (1) This section applies for the purposes of determining whether a dwelling has remained in the social rented sector.
- (2) A dwelling shall be treated as having remained in the social rented sector for any period during which—
 - (a) the freeholder was a person within subsection (3), and
 - (b) each leaseholder was either a person within that subsection or an individual holding otherwise than under a long tenancy.
- (3) A person is within this subsection if the person is—
 - (a) a registered provider,
 - (b) a registered social landlord, or
 - (c) a public sector landlord.
- (4) A dwelling provided wholly or partly by means of a grant under section 27A of the Housing Act 1996 shall also be treated as having remained in the social rented sector for any period during which it was used exclusively for permitted purposes by—
 - (a) the recipient of the grant, or
 - (b) any person treated as the recipient by virtue of section 27B of that Act.
- (5) “Permitted purposes” are purposes for which the grant was made and any other purposes agreed by the Housing Corporation or the HCA.
- (6) Where a lease of a dwelling has been granted to a former freeholder in pursuance of paragraph 3 of Schedule 9 to the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28) (mandatory leaseback to former freeholder on collective enfranchisement) the reference in subsection (1)(a) above to the freeholder shall be construed as a reference to the leaseholder under that lease.

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183 Interpretation: other expressions

- (1) The definitions in this section apply to sections 180 to 182.
- (2) The HCA gives “assistance” to a person if it—
 - (a) transfers housing or other land to the person,
 - (b) provides infrastructure to the person, or
 - (c) gives financial assistance to the person,
 and for this purpose “infrastructure” has the same meaning as in Part 1.
- (3) References to a “registered social landlord” are to a body which, at the time to which the reference relates, was a registered social landlord within the meaning of Part 1 of the Housing Act 1996 (c. 52) as it then had effect.
- (4) “Leaseholder” does not include a mortgagee.
- (5) “Long tenancy” has the same meaning as in Part V of the Housing Act 1985 (c. 68).
- (6) A person provides a dwelling if the person—
 - (a) acquires, constructs, converts, improves or repairs housing or other land for use as a dwelling, or
 - (b) ensures such acquisition, construction, conversion, improvement or repair by another.
- (7) “Public sector landlord” means anyone falling within section 80(1) of the Housing Act 1985.

184 Right to acquire: supplemental

- (1) Section 17 of the Housing Act 1996 (right to acquire: supplemental) applies in relation to the right to acquire under section 180 of this Act with the modifications set out below.
- (2) The modifications are as follows—
 - (a) references to the right to acquire under section 16 of the 1996 Act shall be treated as references to the right to acquire under section 180 of this Act,
 - (b) references to the Welsh Ministers shall be treated as references to the Secretary of State,
 - (c) the reference to registered social landlords shall be treated as a reference to registered providers, and
 - (d) the reference to a resolution of the National Assembly for Wales shall be treated as a reference to a resolution of either House of Parliament.

185 Right to acquire: consequential amendments

- (1) In section 16 of the Housing Act 1996 (right to acquire)—
 - (a) for subsection (1) substitute—
 - “(1) The tenant of a dwelling in Wales has a right to acquire the dwelling if—
 - (a) the landlord is a registered social landlord or a registered provider of social housing,
 - (b) the tenancy is—

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- (i) an assured tenancy, other than an assured shorthold tenancy or a long tenancy, or
 - (ii) a secure tenancy,
 - (c) the dwelling was provided with public money and has remained in the social rented sector, and
 - (d) the tenant satisfies any further qualifying conditions applicable under Part V of the Housing Act 1985 (the right to buy) as it applies in relation to the right conferred by this section.”,
 - (b) in subsection (2)(c) after “registered social landlord” insert “ or a registered provider of social housing ”, and
 - (c) in subsection (3)(a) and (b)(ii) after “registered social landlord” insert “ , a registered provider of social housing ”.
- (2) In section 16A(1) (extension of section 16 to dwellings funded by grants under section 27A) after the first “dwelling” insert “ in Wales ”.
- (3) In section 20 (purchase grant where right to acquire exercised)—
- (a) in subsection (1) after “landlords” insert “ and registered providers of social housing ”, and
 - (b) in subsection (4) after “landlord” insert “ or registered provider of social housing ”.
- (4) In section 21 (purchase grant in respect of other disposals)—
- (a) in subsection (1)—
 - (i) after “landlords” insert “ and registered providers of social housing ”, and
 - (ii) after “dwellings” insert “ in Wales ”,
 - (b) in subsection (2)—
 - (i) after “section 16” insert “ or by section 180 of the Housing and Regeneration Act 2008 ”, and
 - (ii) for “landlord's” substitute “ landlord or provider (as the case may be) ”, and
 - (c) in subsection (4) after “landlord” insert “ or registered provider of social housing ”.

VALID FROM 01/04/2010

Miscellaneous

186 Former registered providers

Where a person ceases to be a registered provider, sections 171 to 175 continue to apply in respect of any property owned by the person at any time when it was registered.

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187 Change of use, etc.

- (1) Where the regulator's consent is required for the disposal of a dwelling by a registered provider, sections 172 to 175 continue to apply in relation to a disposal of the land by the registered provider even if the land has ceased to be a dwelling.
- (2) Sections 172 to 175 also apply in relation to a disposal of land by a registered provider which would fall within Exception 2 or 3 of section 173 but for a change of use of the land by the registered provider.

188 Trustees

Section 39 of the Settled Land Act 1925 (c. 18) (disposal by trustees: best price etc.) shall not apply to the disposal of land by a registered provider.

189 Charities

Nothing in this Chapter authorises a charity to effect a disposal which it would not otherwise have power to effect.

VALID FROM 01/04/2010

Consents under other legislation

190 Consent to disposals under other legislation

The Secretary of State's functions under the following provisions are transferred to the regulator in so far as they relate to disposals by registered providers—

- (a) section 171D of the Housing Act 1985 (c. 68) (consent to certain disposals of housing subject to the preserved right to buy),
- (b) sections 81 and 133 of the Housing Act 1988 (c. 50) (consent to certain disposals of housing obtained from housing action trusts or local authorities), and
- (c) section 173 of the Local Government and Housing Act 1989 (c. 42) (consent to certain disposals of housing obtained from new town corporations).

191 Section 190: consequential amendments

- (1) In section 171D of the Housing Act 1985 (consent to certain disposals of housing obtained subject to the preserved right to buy)—
 - (a) in subsection (2) (consent) for “Secretary of State” substitute “ appropriate authority ”, and
 - (b) after that subsection insert—
 - “(2A) “The appropriate authority” means—
 - (a) in relation to a disposal of land in England by a registered provider of social housing, the Regulator of Social Housing,
 - (b) in relation to any other disposal of land in England, the Secretary of State, and

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- (c) in relation to a disposal of land in Wales, the Welsh Ministers.”
- (2) In section 81 of the Housing Act 1988 (consent to certain disposals of housing obtained from housing action trusts)—
- (a) in subsection (3) (consent) for “Secretary of State” substitute “ appropriate authority ”,
- (b) after that subsection insert—
- “(3A) In this section “the appropriate authority” means—
- (a) in relation to a disposal of land in England by a registered provider of social housing, the Regulator of Social Housing,
- (b) in relation to any other disposal of land in England, the Secretary of State, and
- (c) in relation to a disposal of land in Wales, the Welsh Ministers.”,
- (c) in subsection (5) (consultation of tenants) for “Secretary of State” substitute “ appropriate authority ”,
- (d) in subsection (5)(a) for “himself” substitute “ itself ”, and
- (e) omit subsection (6) (consultation of Housing Corporation).
- (3) In section 133 of that Act (consent to certain disposals of housing obtained from local authorities)—
- (a) in subsection (1) (consent) for “Secretary of State” substitute “ appropriate authority ”,
- (b) after that subsection insert—
- “(1ZA) In this section “the appropriate authority” means—
- (a) in relation to a disposal of land in England by a registered provider of social housing, the Regulator of Social Housing,
- (b) in relation to any other disposal of land in England, the Secretary of State, and
- (c) in relation to a disposal of land in Wales, the Welsh Ministers.”,
- (c) after subsection (1A) insert—
- “(1B) This section does not apply to a disposal of land by a registered provider of social housing unless the land is social housing within the meaning of Part 2 of the Housing and Regeneration Act 2008.”,
- (d) in subsection (3)(c) (modification of certain provisions applied for the purposes of section 133) after “this section,” insert “ any reference to the appropriate national body shall be construed as a reference to the appropriate authority and ”,
- (e) in subsection (5) (consultation of tenants) for “Secretary of State” substitute “ appropriate authority ”,
- (f) in subsection (5)(a) for “himself” substitute “ itself ”, and
- (g) omit subsection (6) (consultation of Housing Corporation).
- (4) In section 173 of the Local Government and Housing Act 1989 (c. 42) (consent to certain disposals of housing obtained from new town corporations)—

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- (a) in subsection (1)(a) (consent) for “Secretary of State” substitute “appropriate authority”,
- (b) after subsection (1) insert—
 - “(1A) In this section “the appropriate authority” means—
 - (a) in relation to a disposal of land in England by a registered provider of social housing, the Regulator of Social Housing,
 - (b) in relation to any other disposal of land in England, the Secretary of State, and
 - (c) in relation to a disposal of land in Wales, the Welsh Ministers.”,
- (c) in subsection (5) (consultation of tenants) for “Secretary of State” substitute “appropriate authority”,
- (d) in subsection (5)(a) for “himself” substitute “itself”, and
- (e) omit subsection (6) (consultation of Housing Corporation).

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